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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 456

JACK GREEN,
Petitioner,

VERSUS

STATE OF OKLAHOMA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CRIMINAL COURT OF APPEALS OF THE STATE OF OKLAHOMA

JACK GREEN,
Petitioner,

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October, 1958.

LITTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. FO 5-8750

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PETITION FOR WRIT OF CERTIORARI

Petitioner prays for a writ of certiorari to review the judgment of the Criminal Court of Appeals of Oklahoma entered on the 25th day of June, 1958, in the above styled and numbered cause.

OPINIONS BELOW

The petitioner, a defendant in the trial court and plaintiff in error in the Criminal Court of Appeals of Oklahoma, sought to withdraw his plea of guilty and substitute a plea of not guilty to the charge of "Burglary, Second Degree." The application was denied by the trial court and an appeal

was immediately lodged with the Criminal Court of Appeals of Oklahoma. The Criminal Court of Appeals denied the relief sought and affirmed the judgment of the trial court. A petition for rehearing was filed and denied by the Court. The opinion of the Court is included in Appendix "A."

JURISDICTION

The right of this petitioner to seek relief in this Court is based on the statutes of the United States, i.e., Title 28, Section 1257(2)(3) of the United States Code.

THE FEDERAL QUESTION

The federal question to be considered is whether or not the petitioner was illegally and unlawfully deprived of his right to a trial by jury as guaranteed by the Constitution of the United States, Amendment VI, which provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation * * *."

In the presentation of this matter, the pivotal issue for consideration is whether or not the petitioner waived his right to trial by jury. The statutes of the State of Oklahoma, that have an application to this matter are as follows, to-wit:

Title 22, Oklahoma Statutes, Section 516:

"A plea of guilty can in no case be put in, except by the defendant himself, in open court, * * *."

Title 22, Oklahoma Statutes, Section 517:

"The court may, at any time before judgment, upon a plea of guilty, permit it be withdrawn, and a plea of not guilty substituted."

The record in this case will disclose that on the 7th day of November, 1956, this petitioner entered a plea of guilty to the charge designated, "Burglary, Second Degree", the same being based on a violation of the following statutes of the State of Oklahoma, to-wit:

Title 21, Oklahoma Statutes, Section 1435:

"Every person who breaks and enters any building or part of any building, room, booth, tent, railroad car, automobile, truck trailer, vessel or other structure or erection in which property is kept, with intent to steal therein or to commit any felony, is Guilty of Burglary in the Second Degree."

Title 21, Oklahoma Statutes, Section 1436:

"Burglary is punishable by imprisonment in the penitentiary as follows:

1. * * *

2. Burglary in the second degree not exceeding seven years and not less than two years."

Thereafter, the petitioner-defendant filed his written application for permission to withdraw his plea of "Guilty" and substitute a plea of "Not Guilty" and stand ready for jury trial, and the court denied this application and said peti-

tioner-defendant was sentenced to serve a term in the Oklahoma State Penitentiary of three years.

The courts of the State of Oklahoma have set down certain rules of interpretation of the statutes as to when a plea of guilty may be withdrawn and plea of not guilty substituted. We, as will hereinafter be presented, respectfully state that the trial court and the Criminal Court of Appeals of the State of Oklahoma, have illegally and unlawfully deprived this petitioner-defendant of his right to a trial by jury as guaranteed by the Constitution of the United States.

REASONS FOR THE ALLOWANCE OF THE WRIT

The Criminal Court of Appeals of the State of Oklahoma had before it the following reasons why the withdrawal of plea of guilty should have been allowed, to-wit:

a. The plea of guilty must have been entirely voluntary without persuasion, promises or ignorance;

b. The plea must not have been based on promises by the County Attorney;

c. The plea of guilty was entered by the petitioner-defendant without having benefit of counsel;

which according to the laws of the State of Oklahoma were sufficient grounds to justify the withdrawal of the plea of guilty and the substitution of the plea of not guilty.

In an appeal based upon the refusal of the trial court to allow the person charged, to withdraw his plea of guilty

and stand for trial by jury, the following rules were promulgated:

Fromcke v. *State*, 37 Okla. Cr. 421, 258 Pac. 927:

> "A defendant in a criminal case should be permitted to withdraw his plea of Guilty, given unadvisedly, either before or after judgment, where any reasonable ground is offered for going to a jury.";

and in *Hardzog* v. *State*, 49 Okla. Cr. 244, reciting the quotation from the *Fromcke* case, with these additional:

> "And, while this is a matter within the discretion of the Court, the discretion is a judicial one which should be always exercised in favor of a trial."

The Criminal Court of Appeals has set down certain requirements to assist the trial courts in the determination of what is an abuse of discretion:

Peterson v. *State*, 58 Okla. Cr. 391:

> "A plea of Guilty should be entirely voluntary, by one competent to know the consequences, and should not be induced by fear, persuasion, promises or ignorance.
>
> * * * * * * * * *
>
> "The plea of guilty should be freely and voluntarily made by one competent to know the consequences, and should not be induced by * * * persuasion, promises or ignorance."

Morgan v. *State*, 33 Okla. Cr. 257 (a misdemeanor):

> "Generally speaking, an agreement whereby the prosecuting attorney promises the performance of cer-